

State of California
California Regional Water Quality Control Board Santa Ana Region

RESOLUTION NO. R8-2022-0017

Approving Amendment to the Water Quality Control Plan for the Santa Ana River Basin
to Revise the Schedule for Attaining the Fecal Coliform Total Maximum Daily Loads for
the Shellfish Harvesting Beneficial Use in Newport Bay

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Santa Ana Water Board), find that:

1. The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) is the central document outlining the Santa Ana Water Board's plan for preserving and enhancing water quality in the region for the protection of beneficial uses for present and future generations. The Basin Plan contains the region's beneficial uses for surface waters and groundwater, water quality objectives to protect those beneficial uses, and implementation programs to achieve the water quality objectives.
2. The current Basin Plan was adopted by the Santa Ana Water Board on March 11, 1994 and approved by the State Water Resources Control Board (State Water Board) on July 21, 1994. The Basin Plan was approved by the Office of Administrative Law (OAL) and became effective on January 24, 1995. The Basin Plan has been subsequently amended to incorporate Total Maximum Daily Loads (TMDLs), authorize the inclusion of attainment schedules in National Pollutant Discharge Elimination System (NPDES) permits, and include other changes.
3. In 1999, the Santa Ana Water Board established Fecal Coliform TMDLs for Newport Bay to protect the Shellfish Harvesting (SHEL) beneficial use. These TMDLs include wasteload and load allocations and an implementation plan to assure attainment of water quality objectives.
4. On June 16, 2017, the Santa Ana Water Board approved an amendment to the Fecal Coliform TMDLs to revise the attainment date for meeting the SHEL water quality objectives from December 30, 2019 to December 31, 2022. The amendment was adopted pursuant to Resolution No. R8-2017-0019 and approved by the State Water Board on February 6, 2018.
5. The Basin Plan amendment adopted through this Resolution would further extend the attainment date for the Fecal Coliform TMDLs to December 31, 2030, in Table 6-1f of the Basin Plan, add a footnote describing the shellfish study to Table 6-1g of the Basin Plan, update the TMDL implementation plan schedule in Table 6-1g, as well as include other non-substantive, editorial

changes for clarity in Chapter 6, Section 3.a of the Basin Plan, which discusses the Fecal Coliform TMDLs. Staff of the Santa Ana Water Board has prepared a staff report that describes the amendment, as well as the specific necessity and rationale for its adoption.

6. The amendment was developed in accordance with Water Code section 13240 et seq. and meets the “necessity” standard of the Administrative Procedure Act in Government Code section 11353, subdivision (b)(2)(C). The amendment is necessary to allow sufficient time for additional studies to be completed to determine whether the current water quality objectives for fecal coliform are scientifically supportable. A preliminary study determined that the current water column-based objectives used in the TMDLs do not correlate with fecal coliform, other fecal indicator bacteria, or viral pathogens in shellfish tissue under dry weather conditions. Following completion of additional studies, the Santa Ana Water Board may need to develop site-specific objectives for and/or new TMDLs to protect the SHEL beneficial use in Newport Bay. The amendment is needed so that there is sufficient time to consider, formulate, and complete projects to assess the appropriateness of the water quality objectives.
7. The 1999 Fecal Coliform TMDLs numeric targets are based on the water quality objectives for bacteria that were established in the 1995 Basin Plan. Those water quality objectives are in turn based on the total coliform objectives specified for body contact recreation in the California Health and Safety Code regulations (Cal. Code of Regs., tit. 17, §§ 7957, 7958) and the U.S. Public Health Service criteria for shellfish harvesting. The proposed revision to the attainment schedule of the TMDLs does not change the underlying scientific basis of these water quality objectives and the amendment, therefore, does not include any new scientific elements requiring independent, external scientific peer review. (See Health & Safety Code, § 57004.)
8. Pursuant to Public Resources Code section 21080.5, the California Natural Resources Agency has approved the basin planning process of the State Water Board and Regional Water Quality Control Boards as a “certified regulatory program” that satisfies California Environmental Quality Act (CEQA; Public Resources Code section 21000, et seq.) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251, subd. (g).) The Santa Ana Water Board adopted a Substitute Environmental Document (SED) for the Fecal Coliform TMDLs under Resolution No. R8-1999-0010 and for the first revised attainment schedule under Resolution No. R8-2017-0019. None of the revisions from the amendment adopted through this Resolution will result in any new significant environmental effects not disclosed in the prior SEDs. Further, there are no changes in circumstances or new information that would otherwise warrant any subsequent or supplemental environmental review under Public Resources Code section 21166 or CEQA Guidelines sections 15162 or 15163.

9. In amending the Basin Plan, the Santa Ana Water Board considered Water Code sections 13240 through 13242.
10. The public has had reasonable opportunity to participate in review and adoption of the Basin Plan amendment. A draft of the amendment and supporting documents were circulated to interested parties for a 30-day comment period, and the Santa Ana Water Board held a public hearing on June 3, 2022, to consider adoption of the amendment. The Santa Ana Water Board considered all testimony offered at the hearing and the written comments submitted by interested parties before taking final action on this Resolution.
11. Following adoption by the Santa Ana Water Board, the Basin Plan amendment and associated administrative record must be submitted for review and approval by the State Water Board and OAL. The Basin Plan amendment will become effective upon approval by OAL.

THEREFORE, BE IT RESOLVED THAT:

1. The Santa Ana Water Board has reviewed and considered the entire record of this matter, including the information contained in the staff report, all written comments, and all oral testimony provided at the public hearing of this matter held on June 3, 2022.
2. Pursuant to Water Code section 13240 et seq., the Santa Ana Water Board hereby adopts the Basin Plan amendment delineated in Attachment 1 (underline/strike-out version) and Attachment 2 (“clean” version) to this Resolution.
3. The Executive Officer is directed to submit the Basin Plan amendment to the State Water Board in accordance with Water Code section 13245.
4. The Santa Ana Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with Water Code sections 13245 and 13246 and, thereafter, forward the amendment to OAL for its approval and to the United States Environmental Protection Agency for informational purposes.
5. The Executive Officer shall request that the State Water Board, on behalf of the Santa Ana Water Board, file a Notice of Decision with the California Natural Resources Agency and the Governor’s Office of Planning and Research after approval by OAL.
6. The Executive Officer is directed, at the time of filing and posting the Notice of Decision, to take steps to promptly ensure payment of the applicable fee to the Department of Fish and Wildlife for its review of the Basin Plan amendment to extend the attainment date for the SHEL portion of the Fecal Coliform TMDLs or to file a Certificate of Fee Exemption, whichever is appropriate.

7. If during the approval process, Santa Ana Water Board staff, the State Water Board, or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes and shall inform the Santa Ana Water Board of any such changes.

I, Jayne Joy, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region on June 3, 2022.

Jayne Joy, P.E.
Executive Officer